

On December 27, 2004 appellant, a 43-year-old letter carrier, filed an occupational disease claim for stress headaches. He alleged that his condition was the result of harassment from coworkers and management. Appellant identified January 2, 2002 as the date he first became aware of his condition and December 27, 2004 when he first realized his condition was employment related.

In a February 8, 2005 report, Dr. Sang Hoon Lee, a Board-certified internist, indicated that appellant was under intense stress on the job, which included harassment from coworkers. As a result he experienced severe headaches and stress symptoms with anxiety. Dr. Lee explained that appellant's headaches, mainly precipitated by the job environment, caused him to be absent from work for one week at the end of 2004. She also stated that appellant did not have a prior history of mental illness or neuroses.

On February 22, 2005 the Office received an unsigned statement purportedly from appellant outlining various incidents of alleged harassment. The statement included a chronology of events from May 3 to August 13, 2002 and July 9, 2003 to February 11, 2005. The Office received a second unsigned statement on April 1, 2005 that outlined a series of work incidents from February 22 to March 23, 2005.

The Office also received a copy of a March 8, 2005 Equal Employment Opportunity (EEO) complaint for alleged discrimination and threats.

Ms. Sung S. Hwang provided an undated statement wherein she described a March 3, 2005 employment incident involving herself, appellant and another coworker. Appellant and Ms. Hwang were conversing in Korean while they worked along side each other. Another coworker, Ms. Johnson, reportedly screamed at the two to speak English. Ms. Hwang indicated that both she and appellant lowered their voices, but continued to speak in their native language. Ms. Johnson again shouted speak English and then stormed out the room.

Appellant's postmaster, James Dear submitted a three-page statement on June 9, 2005. He provided some general background information about appellant, with whom he worked for approximately eight months. Mr. Dear also expressed his opinion that appellant was misrepresenting the facts. Besides his opinion regarding appellant's character and veracity, Mr. Dear provided little information either substantiating or refuting appellant's allegations of harassment.

In a decision dated July 1, 2005, the Office denied appellant's claim because he failed to establish that he was subject to harassment as alleged.

### **LEGAL PRECEDENT**

To establish that he sustained an emotional condition causally related to factors of his federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized medical evidence establishing that he has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that his emotional condition is causally related to the identified compensable employment factors.<sup>1</sup>

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<sup>1</sup> See *Kathleen D. Walker*, 42 ECAB 603 (1991). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.<sup>2</sup> Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.<sup>3</sup>

### ANALYSIS

Appellant claimed that he was repeatedly harassed by coworkers. For harassment to give rise to a compensable disability there must be evidence that harassment occurred.<sup>4</sup> A claimant's mere perception of harassment is not compensable.<sup>5</sup> The allegations of harassment must be substantiated by reliable and probative evidence.<sup>6</sup>

In the statements of record, appellant identified incidents of harassment in the workplace. He provided specific dates, names of individuals involved and described the alleged offensive conduct. Appellant described several incidents involving two coworkers, "Danny" and "Van," both of whom allegedly made sexually suggestive remarks including comments about appellant's spouse. According to appellant, Danny understood some Korean and on more than one occasion he allegedly told appellant to "suck it" or "lick it" in Korean.

The Office asked the employing establishment to comment on appellant's allegations and what it received in response was Mr. Dear's June 9, 2005 statement.<sup>7</sup> However, more than three quarters of the alleged incidents of harassment occurred prior to October 4, 2004 when Mr. Dear began his tenure at the Compton postal facility. He specifically responded to only one incident in November 2004 when appellant claimed to be offended by coworkers saying "ka chung."

Although appellant has provided scant evidence to corroborate the vast majority of his allegations, the record is similarly deficient with respect to evidence contradicting appellant's allegations. Mr. Dear's June 9, 2005 statement is largely nonresponsive to appellant's specific

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<sup>2</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>4</sup> *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

<sup>5</sup> *Id.*

<sup>6</sup> *Joel Parker Sr.*, 43 ECAB 220, 225 (1991).

<sup>7</sup> While the Office forwarded a copy of appellant's first statement to the employing establishment on March 15, 2005, it does not appear from the record that the Office provided the employing establishment with a copy of appellant's second statement, received April 1, 2005, concerning incidents that arose between February 22 and March 23, 2005.

allegations of harassment. While he may believe appellant to be untruthful, Mr. Dear's opinion regarding appellant's character and veracity does not amount to contrary factual evidence.

Office regulations provide that an employer who has reason to disagree with any aspect of the claimant's report shall submit a statement to the Office that specifically describes the factual allegation or argument with which it disagrees and provide evidence or argument to support its position.<sup>8</sup> The applicable regulation further provides that the employer may include supporting documents such as witness statements, medical reports or records, or any other relevant information.<sup>9</sup> If the employer does not submit a written explanation to support the disagreement, the Office may accept the claimant's report of injury as established.<sup>10</sup>

The case will be remanded to the Office to request that the employing establishment provide comments from a knowledgeable supervisor on the accuracy of all statements provided by appellant relative to his claim. If the employing establishment does not respond to the Office's request, the Office may accept appellant's allegations as factual in accordance with its regulations.<sup>11</sup>

### **CONCLUSION**

The Board finds that the case is not in posture for decision.

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<sup>8</sup> 20 C.F.R. § 10.117(a) (1999).

<sup>9</sup> *Id.*

<sup>10</sup> See 20 C.F.R. § 10.117(b). See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Occupational Illness*, Chapter 2.806.4 (d)(1) (October 1995).

<sup>11</sup> *Alice F. Harrell*, 53 ECAB 713 (2002).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 1, 2005 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: October 25, 2005  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board